



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to  
Integrate Procurement Policies and  
Consider Long-Term Procurement  
Plans.

Rulemaking 06-02-013  
(Filed February 16, 2006)

**OPENING COMMENTS OF THE CALIFORNIA LARGE ENERGY  
CONSUMERS ASSOCIATION, CALIFORNIA MANUFACTURERS AND  
TECHNOLOGY ASSOCIATION, CITY AND COUNTY OF SAN  
FRANCISCO, CORAL POWER, L.L.C., ENERGY USERS FORUM, J.  
ARON & COMPANY, STRATEGIC ENERGY, L.L.C., ALLIANCE OF  
RETAIL ENERGY MARKETERS, WESTERN POWER TRADING  
FORUM AND DIVISION OF RATEPAYER ADVOCATES ON THE  
DRAFT DECISION OF ADMINISTRATIVE LAW JUDGE CAROL  
BROWN ON NEW GENERATION AND LONG-TERM CONTRACT  
PROPOSALS AND COST ALLOCATION**

**I. INTRODUCTION**

Pursuant to Rule 77.7 of the Commission's Rules of Practices and Procedure, the Division of Ratepayer Advocates (DRA), California Large Energy Consumers Association (CLECA), California Manufacturers and Technology Association (CMTA), City and County of San Francisco (CCSF), Coral Power L.L.C., Energy Users Forum, J. Aron & Company, Strategic Energy, L.L.C., Alliance of Retail Energy Marketers (AReM) and Western Power Trading Forum (WPTF) hereby submit these joint Opening Comments on the Draft Decision of Administrative Law Judge Carol Brown on New

Generation and Long-term Contract Proposals and Cost Allocation. Parties submitting these comments are jointly known as the “Indicated Parties”<sup>1</sup>.

The DD adopts a proposal for development of new generation whereby the investor-owned utilities (IOUs) enter long-term contracts for new generation and all benefiting customers (bundled and non-bundled) pay for the new generation through a special cost allocation scheme.

While its members take different positions regarding other aspects of the DD, the Indicated Parties commend the Commission for adopting their proposal for unbundling the capacity and energy components of any new generation procured under the adopted policies. However, in adopting the Indicated Parties’ proposal, the DD remains unclear on certain key aspects for the implementation of the Indicated Parties’ proposal. Further, the DD appears to assign the investor-owned utilities (IOUs) sole discretion for developing an auction for the sale of the energy component unbundled from proposed new generation. The Indicated Parties request an all-party workshop for developing the energy auction design and seek clarification of key implementation elements of the new proposal in these opening comments.

## **II. AN ALL PARTY WORKSHOP FOR DEVELOPING AN ENERGY AUCTION**

The Commission should clarify the DD to ensure that it does not give the IOUs sole discretion for designing the auction for the sale of the energy component of the proposed new generation. The DD may be misconstrued as giving the IOUs this authority and should be corrected accordingly.

Specifically, the DD stated:

We agree that the energy component of the contracts for new resources can be managed by an IOU. However, as recommended by the Indicated Parties, we chose to separate the energy component so the risks can be assumed by

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<sup>1</sup> AReM and WPTF, who were not previously with the Indicated Parties, join with the Indicated Parties in filing these comments.

individual market participants. We find that each IOU must demonstrate in its LTPP filing (or a separate proceeding if notified by the Assigned Commissioner of this proceeding) a proposal for how it will plan to conduct periodic auctions for the energy rights to all resources acquired under this interim proposal. These auctions will provide the right for another entity to manage the energy component of the contracts. Essentially, the IOU will sell the tolling right, and retain the RA benefit which it will share with all customers hiring a third party to administer the auction.

(DD, pp. 31-32.)

The Commission should revise the DD to expressly establish a workshop where all parties consider the IOUs proposals and make proposals of their own for the energy auction. At the workshop, parties should be prepared to discuss and develop an acceptable methodology for accepting or rejecting bids in the auction. Clearly, the DD already contemplates a similar process; the “demonstration” the IOUs must make in their LTPP filing “or a separate proceeding if notified by the Assigned Commissioner” is an even more involved process for all-party contribution. This workshop will serve the Commission better if held before the LTPP filings or an alternative proceeding is convened.

The Indicated Parties proposed the energy auction in order to allow those entities who value the energy component the most to acquire and manage it. Therefore, all such entities should get the opportunity to propose how the IOUs should conduct the auction to ensure fairness and build the kind of consensus that validates the auction for all participants.

### **III. ONE YEAR PROVISION ON REVERSION TO JOINT PARTIES PROPOSAL**

The DD should be clarified to state that the periodic auctions should be conducted annually. In any year in which there are no bids accepted for the tolling right to the contract, the IOUs may only manage the energy dispatch in accordance with the original Joint Parties (JP) proposal for one year, and return to the auction for the following year. In addition, the terms under which bids may or may not be accepted should be developed

in a process that allows for input from all interested parties. These terms should not be left to the discretion of the IOUs.

As currently written the DD is consistent with these Indicated Parties' proposals, but it is ambiguous. The Indicated Parties believe this annual auction is another key aspect of the unbundling of the energy and capacity component and should be expressly clarified.

The DD states:

The purpose of the auction will be to maximize the energy value and minimize the residual cost of the RA capacity. The auctions should be periodic so as to capture the fluctuations in the energy market. If there are no bids accepted for the tolling right to the contract, then the IOU will manage the energy dispatch in accordance with the original terms of the JP, i.e., it will be valued at spot market prices.

(DD, p.32.)

It is inconsistent with a periodic auction to have IOUs manage the energy dispatch for the remaining term of the cost allocation proposal after one or two failed auctions. Thus, it appears the DD accepts the Indicated Parties' proposal for limited reversion to the JP's proposal and an annual return to the auction. However, failing to specify the duration of the periodic auctions and the related reversion leaves the determination subject to unnecessary dispute.

#### **IV. USE OF AN INDEPENDENT EVALUATOR**

The Commission should require an Independent Evaluator (IE) to oversee the IOUs' auction of the energy component and ensure that the terms under which bids may or may not be accepted are agreeable to all participants. This requirement is consistent with D.04-12-048 terms for the employment of an IE in the Request For Offers (RFO) process.

In D.04-12-048, the Commission stated:

We will require the use of an IE in resource solicitations where there are affiliates, IOU-built, or IOU-turnkey bidders. However, we will not require that the IEs administer the entire RFO process. The IOU shall consult with its IE and

PRG on the design, administration, and evaluation aspects of the RFO to ensure that the overall scope is not unnecessarily broad or otherwise too narrow. IEs should be available to testify as an expert witness in any associated Commission proceeding regarding upfront review of potential solicitation transactions.

(D.04-12-048, p.124.)

While the energy auction is not an RFO process, it is similar and will likely involve IOU affiliates. Further, the reversion of management to the IOU when the auction fails is not unlike an IOU presenting an IOU-built plant in a competitive RFO. D.04-12-048 is the seminal authority guiding the need determinations and much of the direction of the current new generation policy. Therefore, it is the appropriate authority for imposing an IE on the auction process.

The DD already encourages the IOUs to employ a third party to administer the auction, and further allows each IOU's Procurement Review Group (PRG) to oversee the auction. The design and outcome of the auction are too important for other participants to cede all discretion to the IOUs. The IE should take more control of these two aspects of the energy auction.

Several parties have commented that they are barred from the PRG, but required to pay the costs the IOUs may incur in the management of the energy component after a failed auction. An Independent Evaluator should be mandatory to address at least some of the complaining parties' concerns.

## **V. THE CALL OPTION FOR THE ENERGY COMPONENT**

At page 32, the DD states:

The IOU must submit a proposal for how the RA credit and costs will be calculated and allocated. ...The proposal will include details on what will occur if the IOU determines that it no longer wants to auction the rights to the energy to the highest bidder, at which point the IOU can retain the full cost and benefits of the contract in its bundled customer portfolio for the remaining portion of the 10 year contract. ...

(DD, pp. 32-33.)

Indicated Parties have several concerns about this section of the DD. First of all, it appears to grant the IOUs a free call option on the energy component of the generation, which eliminates the value that is to be maximized as a credit to the capacity costs provided under the capacity allocation. Such a call option appears to be inconsistent with the principles of unbundling energy and capacity noted by the DD because it does not “maximize the energy value and minimize the residual cost of the RA capacity” (DD, p.32.) As a result, if the IOUs are to have such a call option, it should be given its full market value and that value should be credited to the non-bundled customers who have been paying a share of the capacity costs.

Second, if the IOUs decide to take the energy to serve bundled customers, this should be a one-time election so that the IOUs cannot game the energy value.

Third, once the IOU elects the call option, this section of the DD also appears to eliminate the socialized cost methodology for the capacity component. If this is correct, then it is not clear if the IOU can also suddenly withdraw the capacity that has been allocated to non-bundled customers as well, resulting in a negative impact on their RA planning. If the Commission decides that the IOUs should have such an option, a process must be developed first to allow parties to plan for and procure the capacity allocation they may be losing.

Because of the uncertainty created by this section of the DD, the Indicated Parties believe that this section of the DD should be deleted. The Commission can further examine the implications of this aspect of the DD in the implementation stage deferred to Phase II of this proceeding.

## **VI. AVOID FURTHER INTERIM PROPOSAL**

The DD’s interim proposal is supposed to support the development of new generation until the RA proceeding develops a better process for addressing California’s capacity needs for resource adequacy. As the Indicated Parties attest, the DD’s proposal for separate treatment of capacity and energy has broad appeal and properly balances competing interests to reach a workable solution for a transitional methodology.

While the DD leaves the final implementation methodology to be determined in future proceedings, there is no need for parties to assume further delay in the implementation and suggest alternatives to the DD in the event of such delay. The DD should reject any proposals for the adoption of an interim Joint Parties methodology before the full implementation of the proposal adopted in the DD.

## **VII. CONCLUSION**

For the foregoing reasons, the Indicated Parties request that the Commission adopt their proposals in revising the DD.

Respectfully submitted,

/s/ Noel Obiora

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Noel Obiora  
Staff Counsel

Attorney for the Division of Ratepayer  
Advocates on behalf of the Indicated  
Parties

California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102  
Phone: (415) 703-5987  
Fax: (415) 703-2262

July 10, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document  
“**OPENING COMMENTS OF THE CALIFORNIA LARGE ENERGY  
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ADMINISTRATIVE LAW JUDGE CAROL BROWN ON NEW GENERATION  
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Executed in San Francisco, California, on the 10th day of July, 2006.

/s/      Joanne Lark

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Joanne Lark



jmathis@edisonmission.com  
keith.mccrea@sablaw.com  
sisser@goodcompanyassociates.com  
pseby@mckennalong.com  
doug.larson@pacifcorp.com  
curtis.kebler@gs.com  
mlennon@whitecase.com  
douglass@energyattorney.com  
klatt@energyattorney.com  
beth.fox@sce.com  
case.admin@sce.com  
fortlieb@sandiego.gov  
lurick@semptra.com  
troberts@semptra.com  
mshames@ucan.org  
wkeilani@semptrautilities.com  
centralfiles@semptrautilities.com  
norman.furuta@navy.mil  
mdjoseph@adamsbroadwell.com  
mflorio@turn.org  
nao@cpuc.ca.gov  
achang@nrdc.org  
ek@a-klaw.com  
nes@a-klaw.com  
rsa@a-klaw.com  
crmd@pge.com  
agrimaldi@mckennalong.com  
bcragg@gmssr.com  
ckomail@pacbell.net  
james.booth@hklaw.com  
jsqueri@gmssr.com  
jarmstrong@gmssr.com  
jeffgray@dwt.com  
jwiedman@gmssr.com  
lcottle@winston.com  
mday@gmssr.com  
ssmyers@att.net  
frandacosta@att.net  
l\_brown123@hotmail.com  
jchamberlin@sel.com  
mona.tierney@constellation.com  
wbooth@booth-law.com  
bill.chen@constellation.com  
e.larsen@rcmbiothane.com  
gmorris@emf.net  
jgalloway@ucsusa.org  
clyde.murley@comcast.net  
tomb@crossborderenergy.com  
janreid@coastecon.com

michaelboyd@sbcglobal.net  
johnredding@earthlink.net  
jweil@aglet.org  
hydro@davis.com  
cmkehrein@ems-ca.com  
grosenblum@caiso.com  
mary.lynch@constellation.com  
abb@eslawfirm.com  
atrowbridge@downeybrand.com  
cholmes@energy.state.ca.us  
jluckhardt@downeybrand.com  
ldecarlo@energy.state.ca.us  
kris.chisholm@eob.ca.gov  
mpa@a-klaw.com  
alan.comnes@nrgenergy.com  
adrian.pye@na.centrica.com  
jim.mayhew@nrgenergy.com  
rick\_noger@praxair.com  
lisa.decker@constellation.com  
eyussman@knowledgeinenergy.com  
ralph.dennis@constellation.com  
dmcfarlan@mwgen.com  
jimross@r-c-s-inc.com  
lmackey@lspower.com  
tcarlson@reliant.com  
ghinners@reliant.com  
rott@reliant.com  
boudreauxk@calpine.com  
ej\_wright@oxy.com  
sisser@goodcompanyassociates.com  
todil@mckennalong.com  
steve.koerner@el Paso.com  
william.tomlinson@el Paso.com  
kjsimonsen@ems-ca.com  
stacy.aguayo@apses.com  
rsnichol@srpnet.com  
msimmons@sierrapacific.com  
rprince@semprautilities.com  
dehling@kIng.com  
ezorc@kIng.com  
mmazur@3phases.com  
gustavo.luna@aes.com  
vitaly.lee@aes.com  
roger.pelote@williams.com  
btang@ci.azusa.ca.us  
allwazeready@aol.com  
laura.genao@sce.com  
michael.backstrom@sce.com  
rkmoore@scwater.com  
cfpena@sempra.com

usdepic@gmail.com  
hharris@coral-energy.com  
jennifer.porter@sdenergy.org  
susan.freedman@sdenergy.org  
tblair@sandiego.gov  
tdarton@pilotpowergroup.com

jleslie@luce.com  
kjk@kjkammerer.com  
aweller@sel.com  
kмкиener@iid.com  
traceydrabant@bves.com

Dkolk@compenergy.com  
lkostrzewa@edisonmission.com  
pherrington@edisonmission.com  
llund@commerceenergy.com  
george.hanson@ci.corona.ca.us  
olsen@avenuecable.com  
diane\_fellman@fpl.com  
wolff@smwlaw.com  
pauker@smwlaw.com  
lau@cpuc.ca.gov  
rmd@cpuc.ca.gov  
scasey@sflower.org  
dwang@nrdc.org  
filings@a-klaw.com  
sls@a-klaw.com  
sdhilton@stoel.com  
ell5@pge.com  
evk1@pge.com  
epoole@adplaw.com  
CEM@newsdata.com  
jscancarelli@flk.com  
jwiedman@gmssr.com  
phil@ethree.com  
Richard.Raushenbush@lw.com  
robertgex@dwt.com  
judypau@dwt.com  
ecrem@ix.netcom.com  
gx12@pge.com  
nbb2@pge.com  
sscb@pge.com  
svs6@pge.com  
vjw3@pge.com  
bk7@pge.com  
rwalthers@pacbell.net  
k.abreu@sbcglobal.net  
mark\_j\_smith@fpl.com  
andy.vanhorn@vhcenergy.com

greg.blue@dynegy.com  
sschleimer@calpine.com  
ted@energy-solution.com  
jody\_london\_consulting@earthlink.net  
mrw@mrwasoc.com  
mrw@mrwassoc.com  
dmarcus2@sbcglobal.net  
rschmidt@bartlells.com  
cchen@ucsusa.org  
janice@strategenconsulting.com  
rhwisner@lbl.gov  
philm@scedenergy.com  
bgwem@igc.org  
jbradley@svlg.net  
bmcc@mccarthyllaw.com  
sberlin@mccarthyllaw.com  
chrism@mid.org  
joyw@mid.org  
seboyd@tid.org  
brbarkovich@earthlink.net  
rmccann@umich.edu  
e-recipient@caiso.com  
jsanders@caiso.com  
kjohnson@caiso.com  
saeed.farrokhpay@ferc.gov  
jjensen@kirkwood.com  
eolson@navigantconsulting.com  
scott.tomashefsky@ncpa.com  
edchang@flynnrci.com  
ahartmann@lspower.com  
mclaughlin@braunlegal.com  
kdw@woodruff-expert-services.com  
lmh@eslawfirm.com  
mlgilletle@duke-energy.com  
pduvair@energy.state.ca.us  
blaising@braunlegal.com  
steven@iepa.com  
rlauckhart@globalenergy.com  
kmills@cfbf.com  
bburt@macnexus.org  
karen@klindh.com

laura.rooke@pgn.com  
jesus.arredondo@nrenergy.com  
tim.hemig@nrenergy.com  
agc@cpuc.ca.gov  
cab@cpuc.ca.gov  
dbr@cpuc.ca.gov  
dsh@cpuc.ca.gov  
djh@cpuc.ca.gov

esl@cpuc.ca.gov  
joh@cpuc.ca.gov  
kms@cpuc.ca.gov  
kdw@cpuc.ca.gov  
mjd@cpuc.ca.gov  
mts@cpuc.ca.gov  
ner@cpuc.ca.gov  
rls@cpuc.ca.gov  
skh@cpuc.ca.gov  
aulmer@water.ca.gov  
Claufenb@energy.state.ca.us  
dvidaver@energy.state.ca.us  
jdiamond@eob.ca.gov  
kgriffin@energy.state.ca.us  
kkennedy@energy.state.ca.us  
mringer@energy.state.ca.us  
rmiller@energy.state.ca.us  
jwoodwar@energy.state.ca.us  
ntronaas@energy.state.ca.us  
chi@water.ca.gov